IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.60-M of 2002

Date of decision: 13.9.2013

Mahender Singh

…. Appellant

Versus

Suman

…. Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE S.P. BANGARH.

Present: None for the appellant.
None for the respondent.

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S.S. Saron, J.

The marriage between the parties was solemnized at village Sheikhpura, District Karnal according to Hindu rites and ceremonies on 21.6.1996. The parties cohabited as husband and wife; besides, the marriage was consummated. However, they had no issue from the marriage. The appellant Mahender Singh on 10.2.1999 filed a petition under Section 9 of the Hindu Marriage Act, 1955 ("Act" – for short) seeking restitution of conjugal rites. The respondent Suman on 9.3.1999 filed a petition under Section 13(2)(iv) of the Act for dissolution of the marriage between the parties on the ground that the marriage was solemnized before she attained the age of 18 years and she had repudiated the marriage after attaining that age but before attaining the age of 18 years. Both the petitions were consolidated. In the petition filed by the appellant Mahender Singh, the following issues were framed:-

(1) Whether the respondent has withdrawn herself from the society of the

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petitioner (now appellant) without any reasonable cause and excuse? OPP.

(2) Relief.

In the petition filed by respondent Suman, the following issues were framed:-

(1) Whether the petitioner (now respondent) is entitled to a decree of divorce under Section 13(2)(iv) on the ground of repudiation? OPP

(2) Whether the petition is not maintainable in the present form? OPR

(3) Whether the petition is bad for mis-joinder of parties? OPR

(4) Relief.

The learned Additional District Judge, Panipat by his impugned judgment and decree dated 19.1.2002 dismissed the petition of the appellant and allowed that filed by respondent Suman. Accordingly a decree of divorce was passed in favour of the respondent-Suman and against the appellant Mahender Singh. The appellant Mahender Singh aggrieved against the same filed the present appeal which was admitted on 20.3.2002.

CM No.5938-CII of 2002 was filed by Mahender Singh (appellant) along with the appeal praying for stay of operation of the impugned judgment and decree dated 19.1.2002 passed by the learned Additional District Judge, Panipat. On 27.9.2002 counsel for the appellant and counsel for the respondent were present and learned counsel for the respondent sought time to file reply to the application. The case was adjourned to 23.12.2002 for

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consideration. The case was then taken up on 6.1.2003 and on request of counsel for respondent as he was not feeling well, it was adjourned to 21.1.2003. On 21.1.2003, none was present for the appellant. However, counsel for the respondent was present and the following order was passed:-

"Present: None for the petitioner.
Mr. S.M. Sharma, Advocate for the respondent-applicant.

….

Mr. S.M. Sharma, learned counsel for the respondent made a statement that respondent-wife has filed a petition under Section 13(2)(iv) of the Hindu Marriage Act and the same has been allowed by the learned Additional District Judge, Panipat on 19.1.2002. He further stated that petitioner has not challenged the order granting the decree of divorce. He also stated that respondent-Suman has already remarried.

In view of the above, application for stay has become infructuous and is disposed of as such. However, petitioner is at liberty to avail his legal remedy, if any.

Sd/-
(Nirmal Singh)
Judge

21.1.2003
MS"

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Thereafter, the case was sent to the Counselling Centre and on 2.7.2004 neither of the parties appeared. However, notice was ordered to be issued to both the parties alongwith their counsel for 3.9.2004. Thereafter, case was listed before the Counselling Centre on many dates (i.e. on 3.9.2004, 5.11.2004, 21.1.2005, 4.3.2005, 29.4.2005, 19.8.2005, 21.10.2005, 6.1.2006, 17.2.2006, 5.5.2006, 13.10.2006, 15.12.2006, 2.3.2007, 18.5.2007, 21.9.2007 and 7.12.2007). However, none appeared on behalf of the parties. The case was then taken up on 28.11.2009, but none was present on behalf of the parties.

Today, the case was listed for hearing and none has appeared on behalf of the parties. However, the name of the counsel for the appellant is duly reflected in the cause list. Therefore, it appears that the parties are not interested in pursuing the matter.

Consequently, the appeal is dismissed in default in terms of Order 41 Rule 17 of the Code of Civil Procedure.

(S.S. SARON)
JUDGE

(S.P. BANGARH)
JUDGE

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